

TO: Zoning Board of Adjustment
FROM: Community Development Department
DATE: June 15, 2016

RE: **CASE #ET-16-001**
REQUEST: An extension of time for the resumption of a legal nonconforming use (tavern) in accordance with Chapter 15.02.020(4), on a property split zoned R-2/Two Family Residential District and I-1/Light Industrial District.

LOCATION: 807 South 21st Street, Council Bluffs, IA 51501

APPLICABLE

CODE SECTIONS: **§15.02.020(D):** The zoning board of adjustment shall have the following powers, pursuant to this ordinance:
(04) To grant, upon appeal, an extension of time for the resumption of a legal nonconforming use. However, any extension shall be granted prior to the expiration of the six month period outlined in Chapter 15.26.

RELIEF SOUGHT: Extension of time until September 15, 2016

LEGAL

DESCRIPTION: The West 55½ feet of Lots 2 through 4, Block 4, McGee's Addition and the West 55.5 feet of the NW1/4 SW1/4 of Section 35-75-44 lying east of South 21st Street and north of 9th Avenue.

APPLICANT: Stewarts Parking, Ltd. – Sharon Vermule, 2764 Iowa Street, Omaha, NE 68112

REPRESENTATIVE: Ryann A. Glenn, Petersen Law, PLLC, 215 South Main Street, Suite 301, Council Bluffs, IA 51503

OWNER: Kanesville Investments, LLC - c/o Mike Morse, 807 South 21st Street, Council Bluffs, IA 51501

BACKGROUND INFORMATION –

The Community Development Department has received an application from Stewarts Parking Ltd, represented by Ryann A. Glenn, Petersen Law PLLC, to request an extension of time for the resumption of a legal nonconforming use (tavern) in accordance with Chapter 15.02.020(D). The property is currently under contract by Stewarts Parking Ltd. to purchase the property with the intention to operate a tavern and billiards business at the property. The property is considering a legal non-conforming use in that it is split zoned R-2/Two Family Residential District and I-1/Light Industrial District and a 'tavern' is not a principle use in the R-2 district.

The applicant has indicated the extension of time is necessary in order to acquire the property and complete the desired renovations (Attachment B) prior to the expiration of six months. A legal non-conforming use may continue provided the use is not abandoned for a continuous period of six months.

The contract purchasers have submitted a plan of operation (Attachment C) and letter of support (Attachment D). In summary, the proposed use of the property will be the continuation of a tavern with the addition of a billiards business. The proposed business hours are Monday through Friday, 5pm to 2am and Saturday/Sunday 12pm to 2am. The billiards business is intended to provide lessons, offer league opportunities and tournament play.

CURRENT ZONING AND LAND USE – The subject property is split zoned R-2/Two Family Residential District and I-1/Light Industrial District. The tavern structure is located on the R-2 designated part of the property. Properties lying north of the subject property are also zoned R-2/Two Family Residential District and are developed with residential uses. Property located to the south of the property is zoned I-1/Light Industrial and is developed with a non-conforming mobile home park.

The property has the following non-conformities:

1. The property is not zoned appropriately for the proposed use. Even if the tavern structure were located on the I-1/Light Industrial designated portion of the parcel it would not be in compliance with *Section 15.20.060(1)- No tavern shall be located within two hundred feet of any school or religious building, public park, or any conforming residential use. Distance shall be measured between the closest points from lot line to lot line.* The property is within 200 feet of the conforming residential uses located to the north.
2. The floor area of the tavern building is approximately 4,384 square feet according to the Pottawattamie County Assessor website (parcel #754435166002). Parking for a tavern is required at a rate of one parking space per each 100 square feet of gross floor area. The parking requirement based on a 4,384 square foot building is 44 spaces, including 2 ADA spaces.
3. The parking area is hard-surfaced, but does not comply with Chapter 15.23 Off-Street Parking, Loading and Unloading of the Municipal Code, with regard to design layout or number of spaces. The paved area located west of the building is a continuous curb-cut. The entire paved area would accommodate approximately one-half the total number of spaces required and would require modification and striping to meet the current requirements.
4. The existing structure is non-conforming in its placement on the lot. A survey has not been submitted. Based on estimation from available geographic information system (GIS) data the building is approximately 5 feet from the residential home located immediately to the north and appears to share a common wall to the east.

CITY DEPARTMENTS AND UTILITIES – The following comments have been received:

1. Cox Communication has no conflict with the proposal.
2. MidAmerican Energy has no objection or concern with the proposal.
3. The Council Bluffs Building Division has stated that the alterations to the building will require ADA upgrades based on the alteration provision of Title III of the 2010ADAAG. There may be extensive alterations that need to be completed in the kitchen and bathrooms. The extent of the renovation is not known at this time and will be addressed in more detail at the time of permit submittal.
4. The Council Bluffs Police Department has stated that the owners/operators should be aware of the previous issues with the operation including parking in the neighborhood, noise, complaints, etc.

NEIGHBORHOOD RESPONSE – All property owners within 200 feet of the subject property have been notified of the request. Two notifications were returned as undeliverable.

1. Tim Ward the owner of the property at 801 South 21st Street, located immediately north of the subject property, called to voice his opposition to the property being allowed to continue as a tavern. He indicated that family members live in the residence and have had multiple on-going issues with the

- operation of a tavern including: Needles and beer bottles, including partially consumed beer bottles, littering the area and yard; parking in the front yard; and loud music late at night.
2. Kathryn Vavra, owner of property at 2105 8th Avenue, said she does not want the property reopened as a tavern. She stated that there are bottles and broken bottles/glass that have to be picked up and cleaned up by the property owners.

COMMENTS

1. The Future Land Use Plan of the Bluffs Tomorrow: 2030 Plan (comprehensive plan) designates the area for low density residential and park/open space.
2. The applicant has applied for an extension of the nonconforming use of this property prior to the expiration of the six month period.
3. The applicant is asking for the extension of time in order to ensure an adequate period of time to complete proposed renovations prior to resuming operation.
4. Operation of a tavern in proximity to the established residential area has caused adverse impacts and disruption to the neighborhood previously. Some impacts and complaints received are relative to parking. A plan to accommodate additional off-street parking has not been submitted.
5. The property is non-conforming in multiple ways including: use, placement of the structure and parking.

RECOMMENDATION

The Community Development Department recommends denial of the applicant's request for an extension until September 15, 2016 to continue a nonconforming use of land (tavern) in an R-2/Two Family Residential District and I-1/Light Industrial District (split-zoned) at 807 South 21st Street, for the reasons cited above.



Rose Brown
Planning Coordinator

REB



Residential home located at 801 South 21st Street with the subject building in the background.



Subject property with parking area in the foreground and located to the west of the building. Note the continuous curb approach.